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In The

Supreme Court of The United States

October Term, 1930.

No. 464.

RAILROAD COMMISSION OF WISCONSIN, LEWIS E. GETTLE, ADOLPH KANNEBERG, and A. R. McDONALD, as members thereof, and JOHN W. REYNOLDS, as ATTORNEY GENERAL FOR THE STATE OF WISCONSIN,

Appellants,

vs.

W. G. MAXCY, as Receiver of the Washburn Water Works Company, a Wisconsin corporation, and WASHBURN WATER WORKS COMPANY, a Wisconsin Corporation,

Appellees.

Motion of Appellants to Advance.

JOHN W. REYNOLDS,
Attorney General of the
State of Wisconsin.

SUEL O. ARNOLD,
Special Counsel,
Attorneys for Appellants.

Hess Linotyping Co.—Milwaukee.

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Appellees.

Motion of Appellants to Advance.

Come now the appellants in the above entitled cause, and move that this case be advanced for early hearing, and in support of their motion, make the following brief statement of the matter involved, and the reasons relied upon for the advancement:—

This is an appeal from a decree entered by the statutory three-judge District Court, convened pursuant to Section 380 of Title 28, U. S. Code (Section 266 Judicial Code

as amended by Act of Feb. 13, 1925, 43 Stat. at L. 936), dated July 2, 1930, filed July 5, 1930. The decree enjoins the appellants, the Railroad Commission of Wisconsin and the Attorney General of the State of Wisconsin, from enforcing an order of the Railroad Commission of Wisconsin, dated December 4, 1928, which establishes rates to be charged by the appellees for public utility water service rendered in the City of Washburn, Wisconsin, on the ground that the rates thus established are confiscatory.

Upon the first appeal of this case to this court, the decree of the statutory three-judge District Court was reversed, and the case remanded for Findings of Fact and Conclusions of Law, and a decree thereon. 281 U. S. 82.

At the time the Bill of Complaint was filed by the appellees, a temporary restraining order was granted by the District Court, restraining the appellants from interfering with the appellees in charging and collecting rates sufficient to constitute a return of six per cent (6%) on a rate base of One Hundred Ten Thousand Dollars ($110,000.00). Under the temporary restraining order, the appellees were required to furnish a bond conditioned upon the re-payment to the consumers of the Utility of any and all amounts ultimately found by the court to have been collected in excess of the lawful rates, the said bond to cover and embrace all collections made under the temporary restraining order. At the time of the entry of the decree by the statutory three-judge District Court, on April 5, 1929, permanently enjoining the appellants from enforcing the order of the Railroad Commission dated December 4, 1928, no bond was required to be furnished by the appellees, and none was furnished. The appellees have continuously, since the entry of the temporary restraining order, charged and collected rates sufficient to constitute a return of six per cent (6%) on a rate base of One Hundred Ten Thou-

sand Dollars ($110,000.00), with no protection, subsequent to April 5, 1929, to the consumers for refunding any amounts found to be in excess of the lawful rates. In order to properly protect the utility consumers, it is desirable that the present appeal be disposed of promptly.

The question involved in this case is one of great public concern to the people of the State of Wisconsin inasmuch as similar cases are now pending before the Railroad Commission of Wisconsin and have been pending before that Commission since the entry of the first decree in this case by the statutory three-judge District Court on April 5, 1929. Litigation will be averted and the reciprocal rights of utilities and consumers in the State of Wisconsin will be protected by an early decision in this case.

WHEREFORE, appellants pray that the case be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

JOHN W. REYNOLDS,
Attorney General of the State of Wisconsin.
SUEL O. ARNOLD,
Special Counsel,
Attorneys for the Appellants.